IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5558 OF 2005

Mrs.Sunita Vilasrao Salukhe : Petitioner

V/s.

The State of Maharashtra & Ors. : Respondents

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Mr.V.A.Thorat, Senior Advocate, with Mr.Surel S. Shah for the petitioner.

Mr.S.K.Chinchalikar, Asstt. Govt. Pleader, for the respondent nos.1 & 2.

Mr.R.V.More for the respondent nos.4 and 5.

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CORAM : S.A. BOBDE, J.

October 21, 2005.

ORAL ORDER :

1. Rule, returnable forthwith.

Mr.Chinchalikar, learned Asstt. Govt. Pleader for the respondent nos.1 and 2, and Mr.More, the learned counsel for the respondent nos.4 and 5, appear and waive service of rule.

Heard by consent.

2. The petitioner has challenged the order dated

22.8.2005 passed by the State Minister for Urban Development in Appeal no.3856 of 2005 by which the learned Minister has upheld the order disqualifying the petitioner under section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, hereinafter referred to as the "Act", and further confirmed the order under section 44(1)(e) in accordance with section 55A of the Act.

3. Admittedly, the petitioner was declared elected on 10.12.2001 as President of the Pandharpur Municipal Council under section 51 of the Act as submitted by Maharashtra Act no.8 of 2002. The newly introduced section provides for a direct general election of the President by voters whose names are included in the Municipal voters' list and not from amongst Councillors. She was, alongwith her husband Vilasrao, charged with under section 44(1)(e) for directly or indirectly constructing an unauthorised structure on land belonging to a trust in which her husband is a trustee. Section 44(1)(e) reads as follows:-

> "**44. Disqualification of Councillor during his term of office**.-- A Councillor shall be disqualified to hold office as such, if at any

time during his term of office, he--

(a) .....

(b) .....

(c) .....

(d) .....

(e) has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure;

and he shall be disabled subject to the

provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant:"

The Collector disqualified the petitioner and her husband Vilasrao under the aforesaid section 44(1)(e) by order dated 4.7.2005. The petitioner and her husband Vilasrao carried an appeal against this order to the State Government which has been decided by the learned State Minister for Urban Development under sub-section (4) of section 44 of the Act. By the impugned order, apart from upholding the order of the Collector disqualifying the petitioner, the learned Minister has also confirmed the order in exercise of the powers under section 55A of the Act.

4. Mr.Thorat, the learned counsel for the petitioner, submitted that the petitioner, who was elected as the President could not have been disqualified under section 44 at all since that section empowers the Collector to disqualify only a Councillor and not a President.

5. In order to appreciate this contention, it must be noted that the petitioner was elected President in a direct general election under section 51 of the Act, a part of which was substituted by Maharashtra Act no.8 of

2002. The relevant part of section 51 reads as follows:-

"**51. Election of President**.--(1) Every Council shall have a President, who shall be elected by the persons whose names are included in the municipal voters list prepared under Section 11.

(2) Every person qualified to be elected as a Councillor under Section 15 shall be qualified to be elected as a President at an election.

(3) Election of the President shall be held simultaneously with the general elections of the Council and the procedure regarding holding elections to the Council shall, *mutatis mutandis*, apply to such election.

(4) .....

(5) Any person elected under sub-section (4) or (7) shall be deemed to be duly elected at an election under this section.

(6) .....

(7) ....."

Earlier, the law required the President to be elected by the elected Councillors amongst themselves. Thus, under the amended statutory scheme, the argument that a President can be indirectly removed by resorting to section 44(1) and removing him from his primary capacity as a Councillor is no more available. This is fortified by the introduction of section 55A which provides for removal directly of an elected President.

6. Section 55A of the Act provides for removal of President. That power vests in the Government. Section 55A of the Act reads as follows:-

> "**55-A. Removal of President and Vice-President by Government**.-- Without prejudice to the provisions of Section 51-A and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform

his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President, as the case may be, during the remainder of the term of office of the Councillors:

Provided that, no such President or Vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation."

7. The only mode provided by the Act for removing the President is section 55A. Obviously, no proceedings have been taken by the State Government under section 55A for removal of the petitioner. The proceedings taken by the Collector under section 44 must be held to be void since a Councillor alone can be disqualified under that section. The section does not provide for removal of the President.

8. It is clear that the petitioner could not have been disqualified as a Councillor under section 44, nor could her disqualification be upheld under section 55 without any proceedings having been taken against her under the

latter section. The impugned disqualification is violative of the statutory scheme in view of the well-settled principle of law reiterated by the Supreme Court in Dhananjaya Reddy v. State of Karnataka (2001 AIR SCW 1217) in the following words:-

> "25. Relying upon Nazir Ahmad's case (AIR 1936 PC 253 (2) : 1936 (37) Cri LJ 897) and applying the principles laid down in Taylor v. Taylor, (1875) 1 Ch D 426 this Court in Singhara Singh's case (AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2) (Para 8) (supra) held:
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> "The rule adopted in Taylor v. Taylor (1875) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have

been enacted."

9. Peculiarly, the learned Minister has, while upholding the disqualification of the petitioner under section 44, which could not have been done, has purported to confirm that order under section 55A which is clearly impermissible. In effect, what has happened therefore is that proceedings which are without jurisdiction, qua a President, have been confirmed in purported exercise of power which enables the State Government to remove the President of a Municipal Council under that provision. In this view of the matter, it is clear that the petitioner must succeed and her disqualification and its subsequent confirmation by the impugned order of the State Government must be held to be illegal. Order accordingly.

10. It appears that the charge of the post of the President was taken away from the petitioner, consequent upon the impugned order of the Minister dated 22.8.2005. Apparently, this charge was taken on 23.8.2005 i.e. one day prior to the order of status quo granted by this Court in this Writ Petition. Since the disqualification is set aside, it is expedient, in the interest of justice, to direct the respondents to reinstate the petitioner forthwith. Order accordingly.

11. The rule is made absolute in the above terms.

Sd/-

S.A. BOBDE, J.